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Public Agencies May Be Subject to Discovery Under the Public Records Act

Discovery may be allowed when a public agency is sued under the Public Records Act. Under existing law, a records requester may seek a court determination that a public agency has improperly withheld public records. The California Court of Appeal has now ruled that, in certain circumstances, a records requester may also utilize discovery to uncover evidence that could assist the court in determining whether the agency improperly withheld public records.

In ***City of Los Angeles v. Superior Court***, a records requester sought electronically stored material from the Los Angeles Police Department. When the material was withheld, the requester filed a lawsuit and then served written discovery on the City, including interrogatories, requests for admissions and a demand for inspection and production of documents to obtain information for the basis of the City's position. Although not at issue in this case, discovery can also include depositions of public employees. The City objected to all of the discovery, stating that it was not allowed in Public Records Act litigation.

The Court of Appeal ruled that proceedings under the Public Records Act qualify as civil "special proceedings" within the scope of the Civil Discovery Act. The Court of Appeal also ruled that discovery is allowed in Public Records Act litigation if necessary to resolve whether the agency has a duty to disclose and if the discovery request is justified given the need for an expeditious resolution of public records disputes.

If you have any questions, please contact **Amy Greyson** of our **Public Law Department**.

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